

[Senate Bill 321](#) (Beall)

Date: 05/27/15

Program: Motor Vehicle Fuel Tax

Sponsor: Author

Revenue and Taxation Code Section 7360

Effective: January 1, 2016

BOE Position: Support

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Summary: Authorizes the BOE to make specified adjustments to the motor vehicle fuel (gasoline) tax swap rate using a five-year average fuel price estimate. Under specified conditions, authorizes more frequent rate adjustments, but no more frequently than every six-months.

Summary of Amendments: The amendments since the last analysis delete the urgency clause and clarify intent to maintain revenue neutrality for each year.

Purpose: To reduce volatility of the revenues generated by the gasoline tax to assist state and local governments in preparing multiyear transportation budgets.

Fiscal Impact Summary: Does not affect revenues.

Existing Law: In 2010, the Legislature enacted two “fuel tax swap” measures¹ that changed the imposition and rates of state taxes on gasoline and diesel fuel, and require the Board of Equalization (BOE) to determine the appropriate excise tax rate adjustments to maintain revenue neutrality. The gasoline tax changes became operative on July 1, 2010, and the diesel fuel tax changes became operative July 1, 2011.

These provisions² exempt sales and purchases of gasoline from the state General Fund sales and use tax rate. To offset the revenue loss related to this partial exemption, the law increased the gasoline excise tax rate from \$0.18 per gallon to \$0.353 per gallon.³ Conversely, the statute⁴ reduced the diesel fuel excise tax rate from \$0.18 to \$0.13 per gallon but increased⁵ the sales and use tax rate on diesel fuel sales and purchases to offset the loss related to the diesel fuel excise tax rate reduction, resulting in the following rates:

1.87% effective July 1, 2011

2.17% effective July 1, 2012

1.94% effective July 1, 2013

1.75% effective July 1, 2014, and thereafter.

The fuel tax swap provisions require the BOE to maintain revenue neutrality, so that the revenues derived from the increased gasoline excise tax and the increased diesel sales and use tax equals the revenues that would have been derived had the gasoline sales and use tax partial exemption and the diesel fuel excise tax reduction, respectively, not occurred.

Revenue and Taxation Code Sections 7360 and 60050 require the BOE to adjust the gasoline and diesel fuel excise tax rates, respectively, either upward or downward, to maintain revenue neutrality. For

¹ [ABx8 6](#), (Ch. 11, Stats. 2010) and [SB 70](#) (Ch. 9, Stats. 2010). These provisions were re-enacted in 2011 by [AB 105](#) (Ch. 6, Statutes 2011).

² RTC Section 6357.7.

³ RTC Section 7360.

⁴ RTC Section 60050.

⁵ RTC Sections 6051.8 and 6201.8.

gasoline, the BOE determines: (1) whether the sales and use tax revenue loss related to the partial exemption was fully offset by the adjusted rate, and (2) the projected sales and use tax revenue loss for the next fiscal year, considering forecasted gasoline prices and consumption.

For diesel fuel, the BOE determines: (1) whether the revenue gain from the increased sales and use tax rate on diesel fuel sales and purchases was fully offset by the adjusted diesel fuel excise tax rate, and (2) the projected sales and use tax revenue gain for the next fiscal year, considering forecasted diesel fuel prices and consumption.

By March 1 each year, the BOE must determine the rate adjustments and the adjusted rate applies on the following July 1.

Proposed Law: This bill amends RTC Section 7360, with respect to the forecasted revenue projections, to do the following:

- For Fiscal Year (FY) 2015-16, requires the BOE to adjust the excise tax rate based on a five-year average fuel price estimate that relies on fuel price data from the immediately preceding four years and estimated fuel prices for the current fiscal year so as to generate a forecasted fuel price that is weighted primarily by the known fuel price data. That adjusted rate shall be determined by July 1, 2015, and that rate would be effective for FY 2015-16.
- For FY 2016-17, and each FY thereafter, the BOE would follow the same estimate methodology as FY 2015-16, but the rate would be adjusted by March 1 of the fiscal year immediately preceding the applicable FY, and that rate would be effective for the state's next FY.
- If, due to clear changes in either fuel prices or consumption in the state, the BOE determines that the revenue being generated by the adjusted excise tax will be significantly different than the earlier estimates, then the BOE may adjust the rate before the March 1 date, but not sooner than six months between the intervening adjustments.

This bill would be effective January 1, 2016.

Background: The fuel tax swap requires the BOE to determine the excise tax rates for gasoline and diesel fuel on an annual basis. The legislation set the excise tax rate for the first year of the swap and required the BOE to adopt a "revenue-neutral" excise tax rate for each ensuing fiscal year. The calculation requires the BOE staff to develop a forecast of both consumption and price for both gasoline and diesel fuel. Staff works closely with DOF and adopts DOF's consumption forecasts.

BOE's rate calculation also takes into account the "true-up" portion, which is the one-year look back period to determine the difference between what was estimated for the previous fiscal year and what was actually collected.

Since enactment of the "fuel tax swap," the BOE staff has referred to the Department of Finance's (DOF) estimates of fuel consumption and forecasted prices to determine the necessary rate adjustment to achieve revenue neutrality. As the Governor's chief fiscal policy advisor, the DOF ensures financial integrity of the state. It prepares economic forecasts and analyses of various economic developments, and uses the most widely accepted forecasting methodology. The BOE has adjusted the gasoline excise tax rates to maintain the required revenue neutrality through incremental increases and decreases as follows:

July 1, 2011: Increase of \$0.004

July 1, 2012: Increase of \$0.003

July 1, 2013: Increase of \$0.035

July 1, 2014: Decrease of \$0.035

July 1, 2015: Decrease of \$0.060

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

The BOE adjusted the diesel fuel excise tax rate with both increases and decreases, as follows:

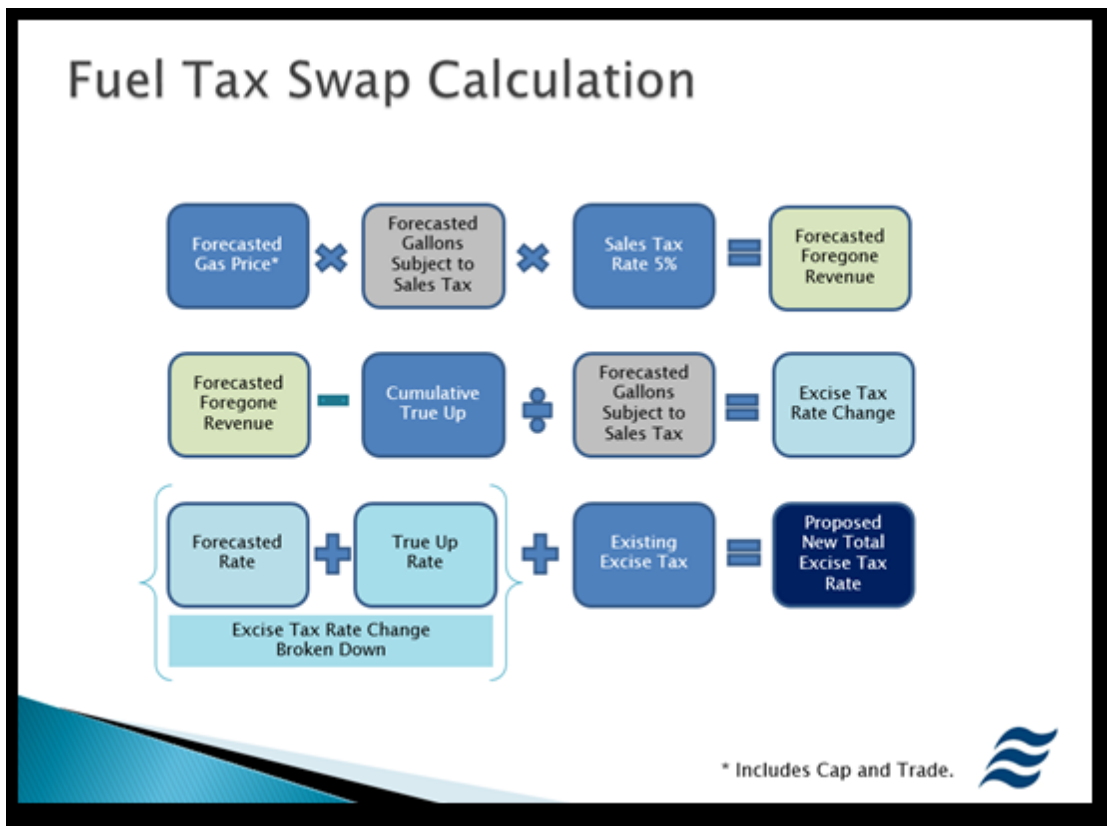
July 1, 2012: Decrease of \$0.03

July 1, 2013: Retain July 1, 2012 rate

July 1, 2014: Increase of \$0.01

July 1, 2015: Increase of \$0.02

The following chart depicts the fuel tax swap calculation:



Commentary:

- The May 27, 2015 amendments** (1) remove the urgency provision, (2) delete a definition of 'revenue neutrality' that allows reconciliation over a reasonable period of fiscal years, and (3) clarify intent to maintain revenue neutrality for each year. **The April 23, 2015 amendments** deleted provisions which would have allowed the BOE to make partial adjustments over a three-year period to take into account the net revenue gain or loss of any fiscal year in order to reduce potential revenue volatility. As noted in the previous analysis, that provision could have only complicated an already complex process, and likely would fail to aid locals with their revenue projections.
- Effect of the bill.** This bill is intended to reduce potential volatility of the revenues generated by the gasoline tax by specifying the forecast method for fuel prices and allowing more frequent excise tax rate adjustments.
- No administrative difficulties with the forecast provisions.** Under the current fuel tax swap rate calculation, the two main components are the forecast and the true-up. The forecast is comprised of two factors: fuel price and fuel consumption quantity. The BOE's rate adjustments are expected to be revenue neutral and any out-year adjustments are intended to maintain revenue neutrality. Since this bill provides specifics to assist with the forecast of fuel prices, and adjustments as needed, it maintains the goal of revenue neutrality. Therefore, BOE staff does not foresee administrative difficulty with the forecast portion of the fuel tax swap rate adjustments.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

4. **First adjustment would be July, 1, 2016.** As required by current statute, the BOE set the FY 2015-16 excise tax rate before March 1, 2015, and that rate takes effect July 1, 2015. The removal of the urgency clause results in an effective date of January 1, 2016. Therefore, the first forecast affected by this bill would be fiscal year 2016-17.
5. **Related bills.** [SB 16](#) (Beall) would impose a ten cents (\$0.10) per gallon surtax on gasoline, and twelve cents (\$0.12) per gallon surtax on diesel fuel, for five years, and equivalent rate one-time floor stock tax. [SB 433](#) (Berryhill) would require the DOF, instead of the BOE, for five years to determine the annual excise tax rate adjustment for gasoline and diesel fuel under the “fuel tax swap” provisions.

Administrative Costs: The BOE’s administrative costs are absorbable. These costs include the fuel tax swap calculations, review, presentation, and decision making. The BOE would also continue to notify the affected industry and respond to inquiries regarding the excise tax rate adjustments.

Revenue Impact: The intention of this bill is to reduce potential revenue volatility by smoothing out forecasted fuel prices and maintain the original bill’s revenue neutrality. Accordingly, this bill does not affect motor vehicle fuel tax revenues.